

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HANK BARTSCH,	§	
	§	No. 580, 2010
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Sussex County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0903015740
Appellee.	§	

Submitted: October 7, 2010
Decided: October 14, 2010

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 14th day of October 2010, it appears to the Court that:

(1) On September 13, 2010, the *pro se* appellant, Hank Bartsch, (“Bartsch”) filed an appeal from a violation of probation (VOP). On September 15, 2010, the Clerk issued a notice directing that Bartsch show cause why the appeal should not be dismissed as untimely filed.

(2) On September 27, 2010, Bartsch filed a response to the notice to show cause. Bartsch’s assistant public defender (“Counsel”) filed a separate response on October 1, 2010. On October 7, 2010, the appellee, State of Delaware (“State”), filed an answer to Bartsch’s and Counsel’s responses.

(3) On October 2, 2009, the date of the VOP hearing and adjudication, Bartsch was advised, in a written notice dated September 10, 2009, that the Public Defender's Office would not represent him on appeal. In the same notice, Bartsch was advised that if he wanted to appeal the VOP conviction or sentence, he was required to file the appeal "within 30 days of today." Bartsch was sentenced on February 26, 2010.¹

(4) On September 13, 2010, Bartsch filed an untimely appeal from his February 26, 2010 VOP sentencing. In response to the Clerk's notice to show cause, Bartsch asks the Court to excuse the delay. Bartsch states that "making an appeal was by word of mouth," he "was not told of [the thirty-day appeal period], and he had trouble "getting through to the public defender's office."

(5) At the Clerk's request, Counsel submitted a letter responding to Bartsch's response to the notice to show cause. Counsel's letter summarizes the Public Defender's on-going representation of Bartsch during the course of the VOP proceedings. In its answer, the State suggests that this matter

¹ See *State v. Bartsch*, Del. Super., Cr. ID No. 0903015740, Graves, J. (Feb. 26, 2010) (sentencing). Bartsch was sentenced to a total of three years at Level V at the Psychiatric Center, with credit for time served. The Superior Court indicated that it would "waive[the] 90-day modification rule" and would "review this sentence when professional staff agrees there is a community placement plan in place."

should be remanded to resentence Bartsch, with the assistance of counsel. The State's suggestion is well-taken.

(6) The Court has concluded that, under the unusual circumstances presented here, Bartsch was not fairly informed of his right to appeal.² In the interest of justice, the Court will remand this matter to the Superior Court with instructions to vacate the February 26, 2010 VOP sentence and to resentence Bartsch, with the assistance of Counsel.

NOW, THEREFORE, IT IS ORDERED that this matter is REMANDED to the Superior Court for further proceedings consistent with this Order. Jurisdiction is not retained. The notice to show cause is moot.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

² See Del. Supr. Ct. R. 26(k) (effective April 12, 2010) (clarifying extent of defense counsel's continuing obligation on appeal to probationer). Compare *Harris v. State*, 2007 WL 1933161 (Del. Supr.) (remanding for resentencing on basis that probationer was not informed of right to appeal) with *Dickerson v. State*, 2010 WL 3158027 (Del. Supr.) (noting, in dismissal of untimely appeal, that probationer was informed in writing on day of VOP sentencing of deadline for filing appeal).